No. 703

LOCAL LOAN COMPANY, a Corporation,

v.

WILLIAM HUNT,

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IN THE

Supreme Court of the United States

October Term, A. D. 1933.

No. 783

LOCAL LOAN COMPANY, a Corporation,
Petitioner and Appellant Below,

v.

WILLIAM HUNT,
Respondent and Appellee Below.

On Petition For A Writ of Certiorari To The United States Circuit Court of Appeals For The Seventh Circuit.

BRIEF FOR THE RESPONDENT AND APPELLEE IN OPPOSITION.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals appears on page 34 of the record. It has not been reported. It is in part at least a reaffirmance of the same Court's opinion in *In re Skorcz*, reported in *67 Fed. (2d) 187, (7th C. C. A., 1933)*.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered November 17, 1933 (R. 35). The petition for a writ of certiorari was filed February 12, 1934. The jurisdiction of this Court is invoked under *Section 240 (a) of the Judicial Code* as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED.

1. Does a Federal District Court sitting in bankruptcy have the power to adjudicate the effect of its own discharge upon a particular obligation of a bankrupt?

2. Does a Federal Court sitting in bankruptcy have power, after a bankrupt has been discharged, to enjoin proceedings in a state court, brought after the discharge, to enforce a claim against the bankrupt which the bankrupt alleges was barred by his discharge?

3. Is a Federal Court sitting in bankruptcy justified in disregarding the decisions of the Court of last resort of the local jurisdiction, which hold that an assignment of wages to be earned in the future under an employment existing at the time of the filing of a petition in bankruptcy creates a lien which survives discharge and enables the loan company to collect the wages earned after adjudication?

STATEMENT.

The facts are substantially as outlined by counsel for petitioner except the additional fact that before the respondent filed his voluntary petition in bankruptcy, the petitioner, on January 30, 1931, filed a notice and copy of the wage assignment in question on respondent's employer, Grand Trunk Western Railroad Company, but the petitioner withdrew such notice on February 12, 1931. The respondent filed in bankruptcy shortly thereafter, to-wit, on March 3, 1931.

ARGUMENT.

I.

The decision of the Circuit Court of Appeals in the case at bar is not in conflict with any decision of any other Circuit Court of Appeals in the nine Circuits. In the case of *Magnum Co. v. Coty, 262 U. S. 159*, at page *163*, Mr. Chief Justice Taft says:

> "The jurisdiction to bring up cases by certiorari from the Circuit Court of Appeals was given for two purposes, first to secure uniformity of decision between those courts in the nine circuits, and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this Court of last resort."

The Chief Justice goes on to point out that eighty per cent of those who petition for certiorari do not grasp the necessary limitations upon the issuance of this writ. He further points out that the writ cannot be used to give a defeated party in the Circuit Court of Appeals a new hearing in the United States Supreme Court. The Court states further that the petition for certiorari should in the first instance be made to the Circuit Court of Appeals which with its complete knowledge of the case may with full consideration promptly pass on it. The Chief Justice says, referring to the Circuit Court of Appeals, last paragraph, page 163:

> "That court is in a position to judge first whether the case is one likely under our practice to be taken up by us on certiorari, and second, whether the balance of convenience requires a suspension of its decree and a withholding of its mandate."

At the top of page 164 the Court says, referring to the Circuit Court of Appeals: "If it thinks a question involved should be ruled upon by this Court, it may cer-

tify it". In the case at bar the Circuit Court of Appeals did not certify any question to the United States Supreme Court. This is significant in that it clearly shows that the Circuit Court of Appeals did not regard this cause as raising any such questions as need be passed upon by this Court of last resort.

Assuming for the sake of argument that the District Court did adjudicate the effect of its own discharge in the case at bar when it restrained the petitioner from proceeding further in the State Court on the wage assignment, the three old Circuit Courts of Appeal cases cited by petitioner are not on all fours with the case at bar. None of these three cited cases involve an assignment of future unearned wages with its question of public policy. *In re Havens, 272 F. 975 (2nd C. C. A., 1921)*, the Court relied upon *Hellman v. Goldstone, 161 F. 913 (3rd C. C. A., 1908)*, in holding that the bankruptcy court cannot restrain the state court in proceedings on a claim against the bankrupt. This claim was not a wage assignment and did not involve questions of public policy arising out of the very nature of wage assignments with their possible creation of the status of involuntary servitude in the wage earner, *i. e.*, a giving by the wage earner of a virtual lien on his body. The facts in the *Havens case* are somewhat complicated and this 1921 decision in the Second Circuit is in no way applicable to the case at bar. Examining the decision in the *Hellman case, 161 F. 913 (3rd C. C. A. 1908)*, relied upon in the *Havens case, supra*, we again find the facts entirely different from those in the case at bar. No wage assignment is involved, however in this cited case the Court uses language which might be construed as being in complete accord with the Circuit Court of Appeals in the case at bar. On page 914 the Court says: "Bankrupt's remedy lies * * * in the federal

court for denial to him of a right under a law of the United States". Having shown that the Second and Third Circuits are not in conflict with the Seventh Circuit in the case at bar, we find also that the First Circuit is not in conflict with the Seventh Circuit in the case at bar. The cited case *In re Marshall Paper Co. (1st C. C. A., 1900), 102 F. 872*, can be readily distinguished from the case at bar in that no wage assignment with its peculiar social implications is involved. Also the cited case simply rules that a right to a discharge and its effect are wholly distinct questions which respondent grants is true. In this cited case a creditor was seeking to prevent a corporation from being discharged because its discharge would have an injurious effect upon the creditor's right to enforce the secondary liability of the directors of the bankrupt corporation. This decision of the First Circuit is obviously not in conflict in any sense with the Seventh Circuit in the case at bar. Therefore, under Point I of petitioner's argument (page 9, petitioner's brief) there has been shown no conflict in the decisions of the various Circuit Courts of Appeal to justify the issuance of the writ of certiorari. The very recent case of *Sims v. Jamison (9th C. C. A., 1933), 67 F. (2d) 409*, holds that a bankruptcy court has jurisdiction to adjudicate the effect of its own discharge. In this *Sims case* decided by the Circuit Court of Appeals in November, 1933, in the Ninth Circuit, the Court ruled that an assignment by chattel mortgage of a non-existing apple crop to be grown in the future would be extinguished in bankruptcy like any other obligation of the bankrupt if the adjudication took place before the crops came into existence. This Circuit Court of Appeals ruled that the bankruptcy court had power to adjudicate the effect of its own discharge and enjoined the holder of a chattel mortgage from harassing and annoying the bankrupt by foreclosing against the apple crop. The Circuit

Court of Appeals in the Fourth Circuit in 1931 in the case of *Seaboard Small Loan Co. v. Ottinger, 50 Fed. (2d) 856,* also held in accord with the Circuit Court of Appeals in the case at bar. The vast majority of the United States District Courts and State Courts are in accord with the decision of the Circuit Court of Appeals in the case at bar.[1]

II.

In view of the lack of conflict in the decisions of the various Circuit Courts of Appeal in the nine circuits respondent contends that the question of whether a Federal Bankruptcy Court has power after discharge to oust a state court of jurisdiction to determine the effect of such discharge is not of such importance that it should be passed upon by the United States Supreme Court. The Federal District and Federal Circuit Courts of Appeal are in almost unanimous accord that the wage assignments are not enforceable after bankruptcy. The writ of certiorari was not intended for the purpose of again litigating this question. Every Circuit Court of Appeal has held that these wage assignments are extinguished by bankruptcy. It should not be litigated further in our court of last resort.

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1 In re West, 128 Fed. 205, (D. C. Oregon 1904); In re Karns, 148 Fed. 143, (D. C. S. D. Ohio 1905); In re Home Discount Co., 147 Fed. 538, (D. C. N. D. Alabama 1906); In re Ludeke, 171 Fed. 292, (D. C. E. D. New York 1909); In re Lineberry, 183 Fed. 338 (D. C. N. D. Alabama 1910); In re Gillespie, 209 Fed. 1003, (D. C. E. D. New York 1913); In re Green, 213 Fed. 542 (D. C. E. D. New York 1914); In re Voorhees, 41 Fed. (2nd) 81 (D. C. N. D. Ohio 1930); In re Fellows, 43 Fed. (2nd) 122, (D. C. Oklahoma 1930); In re Potts, 54 Fed. (2nd) 144 (D. C. Idaho 1931); Levi v. Loevenhart, 138 Ky. 133 (1910), s. c. 30 L. R. A. (N. S.) 375; Leitch v. No. Pac. Ry. Co., 95 Minn. 35, s. c. 103 N. W. 704 (1905); Rate v. Amer. Smelting & Refining Co., 56 Mont. 277, s. c. 184 Pac. 478 (1910); Hupp v. Union Pac. Ry. Co., 99 Neb. 654, s. c. 157 N. W. 343 (1916); Public Finance Co. v. Rowe, 123 Ohio St. 206, s. c. 174 N. E. 738 (1931).

The United States Supreme Court has consistently been opposed to granting a new hearing to a defeated party in the Circuit Court of Appeals. *Magnum Co. v. Coty, 262 U. S. 159.* Suffice it to say, *section 2 (15) of the Bankruptcy Act* provides the power of a bankruptcy court to restrain the loan company in the case at bar after discharge. This section provides that courts of bankruptcy may "make such orders, issue such process and enter such judgments" as may be necessary to enforce and carry out the intention of the entire bankruptcy act and respondent contends that it was the purpose of Congress in adding *section 2 (15)* to the Bankruptcy Act to permit the bankrupt to obtain a fresh financial start in life. For the bankruptcy court to refuse to restrain the creditor in these wage assignment cases would in many instances mean disaster for the bankrupt and thereby defeat the very purpose of bankruptcy. *In re Home Discount Co., 147 Fed. 538,* and cases cited therein.

Section 265 of the Judicial Code (Title 28, Section 379, U. S. C. A.), provides that:

> "The writ of injunction shall not be granted by any Court of the United States to stay proceedings in any Court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

The case at bar clearly comes within the exception and if the restraining order in the case at bar results in the bankruptcy court determining the effect of a discharge in bankruptcy, it is acting within its equitable powers as expressly given by said *Section 2 (15) of the Bankruptcy Act. Seaboard Small Loan Corp. v. Ottinger, 59 Fed. (2nd)* at page *859,* decided in 1931 by the Circuit Court of Appeals, Fourth Circuit; *Sims v. Jamison, 67 Fed. (2d) 409 (9th C. C. A., 1933).*

III.

The Bankruptcy Court does not follow the decisions of the State Supreme Court when the decisions of the State Supreme Court are in conflict with the ruling of the United States Supreme Court as to the nature and extent of an alleged lien on something not yet in existence at the date of the assignment thereof. In the case of *Straton v. New, 283 U. S.,* on page *321 (1930)*, the United States Supreme Court said, referring to the Bankruptcy Court: "It may inquire into the validity of liens, marshal them, and control their enforcement and liquidation". In *Board of Trade v. Johnson, 264 U. S. 1*, at page *11*, the United States Supreme Court said, quoting the Circuit Court of Appeals in the case of *Board of Trade v. Weston, 243 Fed. 332:*

> "Congress derives its power to enact a bankrupt law from the Federal Constitution * * *; but when the language of Congress indicates a policy requiring a broader construction of the statute than the state decisions would give it, Federal Courts cannot be concluded by them."

Again in the case of *International Shoe Co. v. Pinkus, 278 U. S. 261*, at page *265*, the United States Supreme Court said: "The national purpose to establish uniformity necessarily excludes state regulation," referring to the Bankruptcy Act. From the above authorities it is clear that state laws or decisions which contravene the expressed or implied intention of the Bankruptcy Act are not given full faith and credit by the Federal Court, but are superseded by the Federal Court's interpretation of the Bankruptcy Act.

The United States Supreme Court in the case of *Butt v. Ellett, 86 U. S. 544 (19 Wallace)*, held that a chattel mort-

gage on a future cotton crop not yet planted to secure the payment of rent on a cotton plantation did not create a lien because the crop was not in existence when the chattel mortgage was made. The Court said:

> "The mortgage clause in the contract of lease of the 15th of January, 1867, executed by Sillers and Graham, could not operate as a mortgage, because the crops to which it relates were not then in existence. When the crops grew, the lien attached and bound them effectually from that time."

Clearly under this ruling had the tenant gone into bankruptcy before the crops grew, the assignment of those future crops would have been extinguished by the adjudication in bankruptcy. Thus it is clear that the Illinois Supreme Court in the old 1904 case of *Mallin v. Wenham, 209 Ill. 252,* which ruled that a present lien exists upon the execution of an assignment of future unearned wages to secure a loan is directly contrary to the ruling of the United States Supreme Court insofar as the question is concerned of whether a valid present lien is created by the assignment of a non-existent *res.* The Circuit Court of Appeals in the case at bar quite properly refused to recognize the Illinois Supreme Court ruling and in so doing followed the opposite rule laid down in the case of *Butt v. Ellett, supra. Butt v. Ellett* has never been reversed and is the guiding principle of law as to whether or not there exists a valid lien upon future unearned wages in the case at bar.

The opinion of the Court in the case of *In re Skorez, 67 Fed. (2d) 187 (June 1933, 7th C. C. A.),* clearly sets forth almost all of the principles involved in the case at bar. Two State Supreme Courts in relatively late decisions have passed upon the question of whether a present lien exists.

The Supreme Judicial Court of Massachusetts in the case of *Taylor v. Barton-Child Co., 117 N. E. 43 (1917)*, ruled that the assignment of book accounts which are to come into existence in the future in connection with an established business will not be enforced in equity against the trustee in bankruptcy, although a book account is a chose in action. No present property right could pass by this assignment. Therefore no lien existed.

The Supreme Court of Iowa in the case of *Gannon v. Graham, et al., 231 N. W. 675 (1930)*, ruled that the assignment or mortgage of an expectancy in the estate of a parent to secure a debt of the son is wiped out in bankruptcy because no lien was created even though the ancestor died after adjudication but before discharge. No present property right could pass by this assignment. Therefore no lien existed.

Therefore respondent contends that the petitioner throughout his entire argument wrongfully assumes that a lien exists on a non-existing *res*. The vast majority of both Federal and State courts hold that there is no such lien.

CONCLUSION.

Respondent contends that there is no conflict in the decisions of the various Circuit Courts of Appeal on the questions involved in the case at bar with regard to wage assignments in bankruptcy and the procedure with reference to protecting the wage earning bankrupt from importunate creditors. There is no conflict of jurisdiction between Federal and State courts on the questions involved in the case at bar, contrary to the well established rules of law relating to the paramount right of Federal

courts to interpret and administer the bankruptcy act taking it as a whole so as to confer its entire benefits upon the bankrupt. On grounds of public policy alone, the bankruptcy court has equitable power to protect the bankrupt *in personam* as well as *in rem*. These questions having been properly passed upon by the District Court and Circuit Court of Appeals below, there is nothing in this case at bar of sufficient importance to justify the issuance of the writ of certiorari as prayed for and respondent asks that said petition be dismissed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 783.—October Term, 1933.

Local Loan Company, Petitioner, vs. William Hunt.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[April 30, 1934.]

Mr. Justice Sutherland delivered the opinion of the Court.

On September 17, 1930, respondent borrowed from petitioner the sum of $300, and as security for its payment executed an assignment of a portion of his wages thereafter to be earned. On March 3, 1931, respondent filed a voluntary petition in bankruptcy in a federal district court in Illinois, including in his schedule of liabilities the foregoing loan, which constituted a provable claim against the estate. Respondent was adjudicated a bankrupt; and, on October 10, 1932, an order was entered discharging him from all provable debts and claims. On October 18, 1932, petitioner brought an action in the municipal court of Chicago against respondent's employer to enforce the assignment in respect of wages earned after the adjudication. Thereupon, respondent commenced this proceeding in the court which had adjudicated his bankruptcy and ordered his discharge, praying that petitioner be enjoined from further prosecuting said action or attempting to enforce its claim therein made against respondent under the wage assignment. The bankruptcy court, upon consideration, entered a decree in accordance with the prayer; and this decree on appeal was affirmed by the court below (67 F. (2d) 998), following its decision in *In re Skorca*, 67 F. (2d) 187.

Challenging this decree, petitioner contends: That the bankruptcy court was without jurisdiction to entertain a proceeding to enjoin the prosecution of the action in the municipal court; that, assuming such jurisdiction, the rule is that an assignment of future wages constitutes an enforceable lien; but that, in any event, the highest court of the State of Illinois has so decided, and by that decision this court is bound.

First. The pleading by which respondent invoked the jurisdiction of the bankruptcy court in the present case is in substance and effect a supplemental and ancillary bill in equity, in aid of and to effectuate the adjudication and order made by the same court. That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled. *Root* v. *Woolworth,* 150 U. S. 401, 410-412; *Julian* v. *Central Trust Co.,* 193 U. S. 93, 112-114; *Riverdale Mills* v. *Manufacturing Co.,* 198 U. S. 188, 194 *et seq.; Freeman* v. *Howe,* 24 How. 450, 460. And this, irrespective of whether the court would have jurisdiction if the proceeding were an original one. The proceeding being ancillary and dependent, the jurisdiction of the court follows that of the original cause, and may be maintained without regard to the citizenship of the parties or the amount involved, and notwithstanding the provisions of § 265 of the Judicial Code (R. S., § 720), U. S. C., Title 28, § 379.[1] *Julian* v. *Central Trust Co., supra,* 112; *Dietzsch* v. *Huidekoper,* 103 U. S. 494, 497; *Root* v. *Woolworth, supra,* 413; *M'Donald* v. *Seligman,* 81 Fed. 753; *St. Louis, I. M. & S. Ry. Co.* v. *Bellamy,* 211 Fed. 172, 175-177; *Brun* v. *Mann,* 151 Fed. 145, 150.

These principles apply to proceedings in bankruptcy. *In re Swofford Bros. Dry Goods Co.,* 180 Fed. 549, 554; *Sims* v. *Jamison,* 67 F. (2d) 409, 410; *Pell* v. *M'Cabe,* 256 Fed. 512, 515-516; *Seaboard Small Loan Corporation* v. *Ottinger,* 50 F. (2d) 856, 859. Petitioner relies upon a number of decisions where other federal courts sitting in bankruptcy have declined to entertain suits similar in character to the present one, on the ground that the effect of a discharge in bankruptcy is a matter to be determined by any court in which the discharge may be pleaded. See, for example, *Hellman* v. *Goldstone,* 161 Fed. 913; *In re Marshall Paper Co.,* 102 Fed. 872, 874; *In re Weisberg,* 253 Fed. 833, 835; *In re Havens,* 272 Fed. 975. To the extent that these cases conflict with the view just expressed they are clearly not in harmony with the general rule in equity announced by this court. And we find

[1] "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

nothing, either in the nature of the bankruptcy court or in the terms of the bankruptcy act, which necessitates the application of what would amount to a special rule on this subject in respect of bankruptcy proceedings. Courts of bankruptcy are constituted by §§ 1 and 2 of the bankruptcy act (U. S. C., Title 11, §§ 1 and 11), and are invested "with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings," etc. The words "at law" were probably inserted to meet clause (4) of § 2, which empowers such courts to arraign, try and punish certain designated persons for violations of the act. *Bardes* v. *Hawarden Bank*, 178 U. S. 524, 534-536. But otherwise courts of bankruptcy are essentially courts of equity, and their proceedings inherently proceedings in equity. *Bardes* v. *Hawarden Bank, supra*, 535; *In re Rochford*, 124 Fed. 182, 187; *In re Siegel-Hillman Dry Goods Co.*, 111 Fed. 980, 983; *Swarts* v. *Siegel*, 117 Fed. 13, 16; *Dodge* v. *Norlin*, 133 Fed. 363, 368-369; *In re Swofford Bros. Dry Goods Co., supra*, at p. 553; *In re Lahongrais*, 5 F. (2d) 899, 901; *French* v. *Long*, 42 F. (2d) 45, 47. And, generally, proceedings in bankruptcy are in the nature of proceedings *in rem*, adjudications of bankruptcy and orders of discharge being, as this court clearly has treated them, in every essential particular decrees in equity determining a *status*. *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 192; *Commercial Bank of Manchester* v. *Buckner*, 20 How. 108, 118, 119.

What has now been said establishes the authority of the bankruptcy court to entertain the present proceeding, determine the effect of the adjudication and order, and enjoin petitioner from its threatened interference therewith. It does not follow, however, that the court was bound to exercise its authority. And it probably would not and should not have done so except under unusual circumstances such as here exist. So far as appears, the municipal court was competent to deal with the case. It is true that respondent was not a party to that litigation; but undoubtedly it was open to him to intervene and submit to that court the question as to the effect upon the subject matter of the action of the bankruptcy decrees. And it may be conceded that the municipal court was authorized in the law action to afford relief the equivalent of that which respondent now seeks in equity. Nevertheless, other considerations aside, it is clear that the legal remedy

thus afforded would be inadequate to meet the requirements of justice. As will be shown in a moment, the sole question at issue is one which the highest court of the State of Illinois had already resolved against respondent's contention. The alternative of invoking the equitable jurisdiction of the bankruptcy court was for respondent to pursue an obviously long and expensive course of litigation, beginning with an intervention in a municipal court and followed by successive appeals through the state intermediate and ultimate courts of appeal, before reaching a court whose judgment upon the merits of the question had not been predetermined. The amount in suit is small, and, as pointed out by Judge Parker in *Seaboard Small Loan Corporation* v. *Ottinger*, *supra*, at p. 859, such a remedy is entirely inadequate because of the wholly disproportionate trouble, embarrassment, expense, and possible loss of employment which it involves.

Second. Whether an assignment of future earned wages constitutes a lien within the meaning of § 67 (d) of the bankruptcy act,[2] is a matter upon which the decisions of the state and federal courts are not in complete accord; although by far the larger number of cases and the greater weight of authority are in the negative. We do not stop to review the state decisions. Among those which deny the existence of the lien are *Leitch* v. *Northern Pacific Ry. Co.*, 95 Minn. 35, 38; *Lævi* v. *Loevenhart & Co.*, 138 Ky. 133, 136; *Public Finance Co.* v. *Rowe*, 123 Ohio St. 206; *Hupp* v. *Union Pac. R. Co.*, 99 Neb. 654. The only state cases definitely to the contrary which have been called to our attention are certain Illinois cases, mentioned later, and *Citizens Loan Assoc.* v. *Boston & Maine R. R.*, 196 Mass. 528. The lower federal courts which have had occasion to consider the question concur in the view that the lien has no existence or is ineffective as against an adjudication and discharge in bankruptcy. Judge Bellinger, in *In re West*, 128 Fed. 205, succinctly states the ground of his ruling in accordance with that view as follows:

"The discharge in bankruptcy operated to discharge these obligations as of the date of the adjudication, so that the obligations

[2] "Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall, to the extent of such present consideration only, not be affected by this Act." U. S. C. Title 11, § 107 (d).

were discharged before the wages intended as security were in existence. The law does not continue an obligation in order that there may be a lien, but only does so because there is one. The effect of the discharge upon the prospective liens was the same as though the debts had been paid before the assigned wages were earned. The wages earned after the adjudication became the property of the bankrupt clear of the claims of all creditors."

This conclusion finds ample support in the following decisions among others. *In re Home Discount Co.*, 147 Fed. 538, 547 *et seq.*; *In re Lineberry*, 183 Fed. 338; *In re Voorhees*, 41 F. (2d) 81; *In re Fellows*, 43 F. (2d) 122; *In re Potts*, 54 F. (2d) 144; and especially *Seaboard Small Loan Corporation* v. *Ottinger, supra.*

The earning power of an individual is the power to create property; but it is not translated into property within the meaning of the bankruptcy act until it has brought earnings into existence. An adjudication of bankruptcy, followed by a discharge, releases a debtor from all previously incurred debts, with certain exceptions not pertinent here; and it logically cannot be supposed that the act nevertheless intended to keep such debts alive for the purpose of permitting the creation of an enforceable lien upon a subject not existent when the bankruptcy became effective or even arising from, or connected with, preexisting property, but brought into being solely as the fruit of the subsequent labor of the bankrupt.

Third. To the foregoing array of authority petitioner opposes the decisions of the Supreme Court of Illinois in *Mallin* v. *Wenham*, 209 Ill. 252, and *Monarch Discount Co.* v. *C. & O. Ry. Co.*, 285 Ill. 233. Undoubtedly, these cases hold, as petitioner asserts, that in Illinois an assignment of future wages creates a lien effective from the date of the assignment, which is not invalidated by the assignor's discharge in bankruptcy. The contention is that even if the general rule be otherwise, this court is bound to follow the Illinois decisions, since the question of the existence of a lien depends upon Illinois law.

We find it unnecessary to consider whether this contention would in a different case find support in § 34 of the Judiciary Act of 1789, now § 725, Title 28, U. S. C.,[3] since we are of opinion that it is

[3] "The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."